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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,145	01/22/2002	James W. Yonker	J-3315	5120

28165 7590 10/15/2004

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RACINE, WI 53403-2236

EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 10/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/054,145

Applicant(s)

YONKER ET AL.

Examiner

Neil Levy

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 3/5/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Receipt is acknowledged of IDS and RCE request.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 4-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear how to envision an internal cavity between cover and housing.

If it is between cover, and housing, what is the internal cavity internal to?

Referral in claims to numbered figure features is acceptable.

Claims 1, 2, 4, 5, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over pleasants –6272791. Pleasants presents a container, the instant disposable, (col.2, lines 50-53) package with a removably mounted cap, the instant cover, with an animal poison bait mix (col.3, lines 1-20). The housing of the instant is the base of pleasants, with the first and second containers seen as in the cavity “there between” of the instant invention, supported by the base and covered by the cap. The base includes tabs, constituting the instant handles (col.3, lines 45-52). The cap is notatable, permitting in one position bait coverage, and in the other, bait examination (claims 1, 3, col. 15, 16). Physical size of the package cap be adjusted to accommodate the animal desired (col.13, lines 57-61). Base is exemplified in fig.1, (20). It has a bottom wall, and a wall, (24) extending upwardly there from, with a bottom position(22), for resting on a surface. The cover, or cap, 30 has a downwardly open cap configuration, but instead of a handle, it is deformable to fix to base (col.3, lines 39-41). Figs 18, 20 illustrate the

removable/movable cap with tabs on the base top portion (col.8, line 62-col.9, line 15). Alternatively, fig.25 illustrates the cap (130) with tab (152) extending radially outward there from (the instant handle). The base includes upward extending tabs (25-31, fig.2) equivalent to the instantly claimed handle of claim 2.

The devices of pleasant provides bait and poison, described in background, as inclusive of lethal action (col.1, lines 24-27), but, although specifying rodents, does not specify the components of the bait or rodenticide-any will do, and the devise can utilize different types of poison (col.2, lines 33-41). Although the base is not adhesively attached to a surface, adhesives are envisioned, and permit of closure of internal containers (col.7, lines 30-47), thus, readily useable to affix-base to a surface, if such would be desired. Also shown is concern for pet/child consumption (col.13, lines 51-54) although Malodor/aversives were not envisioned.

Claims 1, 2, 4-6, 8, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over pleasants-6272791 in view of Shuyler 2957804 and Bitrex.

Pleasants (above) provides the instant package, but specifies only bait and poison for ratting killing rodents are open to one in the art to select. Shuyler specifier the instantly claimed poison (Table D), with baits (col.11, 12) and attractant (col.12, lines 29-35), but only colors bait as warning to children (col.12, lines 36-48). Bitrex shows (p.20) pesticide use as an evasive.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize a disposable bait to control rats, to use one of the

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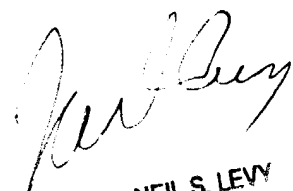
pleasants containers, with bait of choice and poison shown effective by Shuyler, and with added Bitrex to prevent accidental child or pet ingestion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday from 7:00a.m to 5:30p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on (571) 272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Levy/tgd

October 4, 2004

  
NEIL S. LEVY  
PRIMARY EXAMINER